

Exhibit 67

Original Transcript

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOHN WELCH,

Plaintiff(s),

vs.

09-CV-04400

UNITED PARCEL SERVICE, INC.,
d/b/a UPS,

Defendant(s).

~~~~~

**EXAMINATION OF**

**JOHN K. WELCH**

December 8, 2010  
10:55 a.m.

New York, New York

ANGELA GRANT



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any administrative charges or complaints  
against any previous employer?

A. No, ma'am.

Q. Have you ever filed any  
administrative charges or complaints against  
UPS?

A. No, ma'am.

Q. Have you ever filed any complaints  
with any administrative agency against UPS?

A. No, ma'am.

Q. When did you first retain counsel in  
this matter?

A. It was about September of 2008.

Q. Was it your present counsel?

A. Yes, ma'am.

Q. Did someone refer you to Ms. Sinha  
or her law firm?

A. No.

Q. How did you locate them?

A. Yellow Pages.

Q. Before retaining Ms. Sinha's firm,  
did you speak to any other attorneys?

A. No, ma'am.

Q. Did any other attorneys or law firms



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1 Welch  
2 refuse to represent you?

3 A. No, ma'am.

4 Q. Did anyone encourage you to file a  
5 lawsuit against UPS?

6 A. No.

7 Q. Did you confer with anyone other  
8 than counsel about the filing of your lawsuit  
9 against UPS?

10 A. No.

11 Q. Have you spoken with anyone other  
12 than counsel about your lawsuit against UPS?

13 A. No.

14 Q. No other UPS employees?

15 A. No.

16 Q. Have you filed any workers  
17 compensation petitions against UPS?

18 A. No.

19 Q. You gave your home address to the  
20 court reporter.

21 A. Yes, ma'am.

22 Q. What was the address?

23 A. 109 Dovecote, D-o-v-e-c-o-t-e, Lane,  
24 Commack, New York 11725.

25 Q. How long have you lived at that



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address?

A. Three and a half years.

Q. Do you own this property?

A. No, ma'am.

Q. So you're renting?

A. Yes, ma'am.

Q. Does anyone else live with you at  
this address?

A. Yes.

Q. Who?

A. Cheryl Klewicki, K-l-e-w-i-c-k-i.

Q. Who is Ms. Klewicki?

A. She's my significant other.

Q. Has she lived at this property with  
you for the full three and a half years?

A. Yes, ma'am.

Q. Where did you live prior to the  
Dovecote Lane address?

A. I lived at 241 Coehl, C-o-e-h-l,  
Street, Massapequa Park, M-a-s-s-a-p-e-q-u-a,  
Park, New York 11762.

Q. How long did you live at that  
address?

A. I lived at that address about seven



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2 years.

3 Q. Did anyone else live with you at  
4 that address?

5 A. Yes.

6 Q. Who lived with you?

7 A. Jennifer Welch.

8 Q. Anyone else?

9 A. Rachel Welch, R-a-c-h-e-l. Brennan,  
10 B-r-e-n-n-a-n, and Sarah.

11 Q. Who are those individuals?

12 A. Jennifer is my former wife, and  
13 Rachel, Brennan and Sarah are my children.

14 Q. What are their ages?

15 A. Presently 16 for Rachel. Brennan is  
16 14, and Sarah is 11.

17 Q. The Coehl Street property, did you  
18 own or rent that property?

19 A. Own.

20 Q. Was that sold?

21 A. No.

22 Q. Is that still owned by your ex-wife?

23 A. Yes.

24 Q. Are you still married to Jennifer?

25 A. No, ma'am.



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Q. When were you divorced?

A. Final was 23 October of '08.

Q. How long were you married?

A. Fifteen years.

Q. During the time that you were married, what was your wife's occupation?

A. She was a homemaker.

Q. Have you remarried?

A. No. Not yet.

Q. You said you're living with your girlfriend.

What is her occupation?

A. She works for New York State Assessor's Office.

Q. In what capacity?

A. She's just an assessor.

Q. Prior to your marriage to Jennifer, did you have any previous marriages?

A. No.

Q. Jennifer was your first marriage?

A. Yes.

Q. As part of your divorce, do you have any child support obligations?

A. Yes.

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Q. What are those?

A. Child support is 2,300 per month.

Q. And your children live with  
Jennifer?

A. Yes.

Q. Do you have any alimony obligations?

A. Yes. That's 1200. 1,200.

Q. Also payable to Jennifer?

A. Yes.

Q. At present, are you making any  
tuition or any school payments for any of your  
children?

A. No.

Q. How much is your rent presently?

A. 700.

Q. Is that total, or is that your share  
of the rent?

A. That's my share.

Q. So is the total rent 1400?

A. No, that's just my contribution.

Q. Other than your \$700 a month rent  
payment, do you have any other monthly  
expenses?

A. I have my phone.



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request that a copy of the 2009 --

MS. SINHA: I think that may have  
been 2009.

We will take the 2008 under  
advisement and, of course, I'm going to  
be supplementing our responses with  
2010.

RQ MS. GRAZIOSO: Just for the record,  
we are going to request a copy of all  
videos that have been made.

MS. SINHA: OK.

Q. Have you taken or recorded any  
videos that you have subsequently erased or  
deleted?

A. No.

Q. What was the purpose for taking the  
video recordings?

A. To capture myself working out of my  
restrictions.

Q. Have you ever audiotaped any  
conversations with anyone at UPS?

A. Yes.

Q. Going forward, whenever I say tape  
record, I'm going to be referring to audio and



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not video.

What conversations have you tape  
recorded at UPS?

A. One conversation.

Q. Who was that conversation with?

A. It was Dan Daly.

Q. Who is Dan Daly?

A. Security manager at the time.  
Division manager.

Q. Do you recall the date of the  
conversation that you recorded with Mr. Daly?

A. I can give an estimate.

Q. OK.

A. Somewhere around February of 2009.

Q. Was Mr. Daly's role at that time  
security manager?

A. Yes.

Q. Was he in any reporting chain of  
yours?

A. No.

Q. Did you ask Mr. Daly for consent to  
record the conversation?

A. No.

Q. Did Mr. Daly know you were recording



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2 the conversation?

3 A. No.

4 Q. What did you use to record the  
5 conversation?

6 A. Tape recorder. Just a digital tape  
7 recorder.

8 Q. How did you record the conversation  
9 without Mr. Daly's knowledge?

10 A. Just had it in my pocket.

11 Q. Shirt pocket?

12 A. Jacket pocket.

13 Q. Where did you obtain the recording  
14 device?

15 A. Staples.

16 Q. Did you buy it specifically for this  
17 purpose?

18 A. No. I believe I had it. I used to  
19 use it to record things I wanted to, almost  
20 like, like a daily things to do. Like if I  
21 needed to do something, instead of writing it  
22 down, I would just record into it.

23 Q. Do you still have the recording  
24 device?

25 A. Yes.



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talk to me. This is while I was out on disability that I didn't ask to be out on.

Q. You said this was February '09-ish?

A. Yes.

Q. So Mr. Daly called you and asked to speak to you.

Did he say what it was about?

A. He said -- he wasn't precise about what the meeting was to be held for. But he did say, I have some concerns, and I'm hearing some things, and I know you're going through stuff, so I'd like to talk to you.

Q. What about that made you want to record the conversation?

A. Because I knew I had done nothing wrong to warrant the security manager to call me and meet me off property. It just was not a customary meeting.

Q. Had you had any prior relationship with Mr. Daly?

A. Only, only in the normal course of business.

Actually, yes, something pretty substantial, actually.



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Q. What previous interaction had you had with Mr. Daly?

A. I was the manager of the Foster Avenue local sort. I was promoted by Bruce Pace, who was aware of my disability --

Q. What was Bruce's last name? I'm sorry.

A. Pace, P-a-c-e.

-- aware of my disability but valued my ability to work with people and sort. It was beneficial for both parties that he promote me.

That was in 1999 I was promoted. Then I took over the Foster local sort, and then in the interim I went and took over a package center, which was the Kensington center. It was a challenging center of which I had previously worked as a supervisor, so they saw it necessary that I move into that position. Then the local sort started to have some difficulties, so they moved me back to the local sort.

And while on the local sort, it was a pretty large operation. It carried -- it



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2 was the operation that carried the local sorts  
3 for the district. So if my local sort failed,  
4 the district failed their local sort numbers.

5 While on the local sort I'm  
6 responsible for numerous outbound trailers, a  
7 hundred, over a hundred people, air containers  
8 going to a plane, all the operational  
9 difficulties that come with that job. I  
10 accepted that wholeheartedly.

11 There was a clerical supervisor by  
12 the name of James Edgette --

13 Q. Could you spell his last name.

14 A. E-d-g-e-t-t-e.

15 -- who's responsible for the clerks  
16 in the Foster Avenue facility. The clerks  
17 were maybe 12 people working varying hours of  
18 the day and night. I had nothing but positive  
19 feedback on my results on the local sort. In  
20 fact, was made aware by Mike Hughes that the  
21 local sort on -- the Foster Avenue local sort  
22 had achieved a quantum leap in productivity  
23 year to year during my reign as the manager of  
24 that local sort. It increased almost ten  
25 pieces per hour.



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So obviously it was a challenging job. I enjoyed it, and it was one that I was doing well at, and it was happy days.

Then James Edgette quit. James Edgette worked 12 hour days. He worked very hard. He did the clerks like no one else I ever saw before. He would look into the system. Most people would just kind of like supervise from the people perspective. He went in deeper, into the data they were doing and to their quality and their results, and he even came up with a productivity expectation that in the past we never had. James did a lot of work.

James quit. Now I'm in the back of the building with these trailers and with these miles of belts and numerous people and having to deal with all the drivers coming in late, and there's six clerks working at the time.

Q. Do you know approximately the time frame we're talking about, in terms of him quitting?

A. Yes, my operation -- oh, James



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Edgette, 2000. And it was probably around -- I'm going to back it up three months, so August, probably around May. And I don't know why he quit. He just decided to move on.

Now, the clerks had no one to supervise them. So I was basically told, you know, try and piece together between doing your job and hold down the clerks. I was already working in excess of 12 hours a day, so I couldn't possibly find 12 more hours in my day that Jim was contributing to that job. So basically the clerks' jobs were to go out there, do their jobs and, out of exception, any problems they were having, they would come to me.

Around August of 2000 I come to work, and I'm told to go to the division manager's office, Gerrais Gary is the division manager, G-e-r-r-a-i-s, and get down there, and there's a full complement of security personnel, Dan Daly, Ralph Forgato, F-o-r-g-a-t-o.

Q. And Dan Daly's position at that time was also still security manager?



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A. Yes.

Q. Is that the first time --

A. Yes. He's a division manager level.

Q. Was that the first time you met  
Mr. Daly?

A. No. I've known him since the very  
first day that he came into the district,  
which was maybe around ten years ago now,  
maybe more.

So they asked me to sit down. It  
was around crunch time when my operation was  
starting, and I needed -- that was crucial  
time to tell people where to go, what to do.  
Organize the supervisors, make sure the lineup  
was set up with the trailers, make sure the  
staffing was correct.

They had a stack of papers in front  
of them and they said, we have a problem here,  
John. And I said how can I help you with  
that? They said, well, here's the problem.  
The clerks are not inputting the DIRs.

Q. What's DIR stand for?

A. That was my question at the time,  
what is a DIR?



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DIR is a damage inspection report. When a package is damaged, it is usually put on paper as on a DIR report; and then it goes in electronically so that any outstanding claims on these packages, they would be linked together, and, therefore, we would be able to minimize, you know, cost and loss.

So this not having been done was the result not of management during my operation but, rather, the fact that there was 50 percent of the clerks on vacation during the summer months. So if six were working and three were on vacation, the person responsible for doing the damages, which was Anthony Fisher, would have to leave his job to cover one of the clerical stations. And he did do that. But at no time prior or no time prior did I know that Anthony Fisher was not doing his DIRs. For that matter, I didn't even know what a DIR is.

So they said we have a serious issue here that falls under your responsibility.

And I said, my responsibility? You know, hey, this happened, how can I help?



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Let's move forward.

Dan Daly told me, we want you to accept full responsibility for this not having occurred. You are a manager. You are the only manager here at night, that is why we hired you. This is your responsibility. I want you to give me a writeup that you are accepting responsibility for this.

I will accept responsibility for anything I do wrong, but I will not ever accept responsibility for something that I could not have possibly been responsible for. So I left that meeting and I gave a writeup, as requested. But in the writeup I put in, I remember one sentence that really jumps out of the page, and it was that I refuse to accept responsibility for this matter in the context of how it relates to me.

And I figured that would just put the situation to bed and let us move on. Let us learn from what we've done wrong here. And it didn't happen that way, because a week later while on my operation --

Q. Who was the writeup addressed to?



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Q. Did you ever come to learn what the purpose of the meeting with Dan was?

A. No.

Q. Did he ever indicate what prompted him to call you?

A. He said, I'm just hearing things. And I've known you, you're a good guy. You're a good UPSer, and, hey, where is this going? Perhaps not in the transcript but on the telephone.

Q. When you transcribed this from the audio recording, was there any paraphrasing? Did you leave anything out?

A. No.

Q. So to the best of your ability, it's a verbatim account of the conversation?

A. Yes, ma'am.

Q. In the transcript Dan makes mention to an email that you had sent to Kevin Dilibero and some other conversation which had caused some concern.

A. OK.

Q. And I'm wondering if you have any recollection of that or that conversation with

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2 Dan about that.

3 MS. SINHA: Is there a page number  
4 you're looking at?

5 MS. GRAZIOSO: I'm trying to find  
6 it.

7 MS. SINHA: 160.

8 MS. GRAZIOSO: Yes.

9 Q. It's the first paragraph where you  
10 are quoting Dan, and it starts "So now the  
11 doctor tells you."

12 A. I guess I have some recollection of  
13 that email. In the email, I believe the email  
14 was the one in which I mention previous events  
15 in which I felt I was being discriminated or  
16 retaliated against.

17 MS. GRAZIOSO: Can we mark this as  
18 Defendant's C.

19 (Defendant's Exhibit C, Document  
20 Bates stamped D0677 through D0681,  
21 marked for identification, as of this  
22 date.)

23 Q. I'm going to show you now what's  
24 been marked as Exhibit C. If you could just  
25 take a second and review that.



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A. OK.

Q. And this appears to be an email dated January 26, 2009 sent at 3:17 a.m. from John Welch to Doug Trandiak, Kevin Dilibero, Irene Gordon and promero@laborlaws.com, frank@laborlaws.com and Mike Ridolfi.

Do you recognize this email?

A. Yes, ma'am.

Q. Is this an email that you wrote and sent?

A. Yes.

Q. Are P. Romero and frank@laborlaws.com, were they your attorneys at the time?

A. Yes.

Q. Are they associated with Ms. Sinha's firm?

A. Yes.

Q. In the third full paragraph that starts with "I have asked for your support," if you go down to about the middle of the paragraph, it says, "Kevin, your mistake is for having made this choice to protect those that have violated the law, in lieu of



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2 standing for what is just and righteous."

3 And then the next sentence says,  
4 "This cannot be undone."

5 And then the next sentence says,  
6 "Well, someone like me is perhaps someone  
7 you've never met before. Someone like me is  
8 the person who is going to hold you  
9 accountable, either willingly or through  
10 traditional intervention."

11 A. Yes.

12 Q. Was that meant as a threat to Mr.  
13 Dilibero?

14 A. I wouldn't say threat, because a  
15 threat is a condescending word and can be  
16 interpreted as something physical; but it can  
17 be, it can be a notice.

18 Q. What type of notice?

19 A. That the ongoing discrimination,  
20 retaliation and things of that nature are  
21 violations of my Persons With Disabilities  
22 Act, numerous attempts, all these things have  
23 forced me by circumstances to have to acquire  
24 legal intervention.

25 Q. Now, you said this was the only



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Q. Same photo?

A. Perhaps different lighting, but it's pretty much the same photo.

Q. And you took both these photos yourself?

A. Yes.

Q. And you took them both with your Android phone?

A. Yes.

Q. I also want to talk a little bit about some of your health conditions.

A. Yes.

Q. What current medical conditions are you suffering from?

A. I have hypertrophic cardiomyopathy, also known as HCM, abbreviated.

Q. Anything else?

A. I have been diagnosed with bipolar disorder. I have a hiatal hernia. I have restless leg syndrome, RLS. I have sleep apnea, depression.

Q. Any other conditions?

A. Depression would be also attributed diagnosed with PTSD, post-traumatic stress



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2 disorder.

3 Q. Any other conditions?

4 A. No, none that -- normal tooth decay,  
5 things of that nature.

6 Q. For each of the conditions, I'm just  
7 going to ask you some questions about each of  
8 them to get a little bit more information.

9 So we will start with the HCM.

10 A. OK.

11 Q. When were you first diagnosed with  
12 HCM?

13 A. 2007. I don't know -- I'm a decade  
14 early. 1997, I'm sorry.

15 Q. What doctor diagnosed you?

16 A. Dr. Mark Sherrid, S-h-e-r-r-i-d.

17 Q. Was Dr. Sherrid your doctor at the  
18 time?

19 A. No.

20 Q. How did you come to be treated by  
21 him?

22 A. We did some research and found out  
23 that Dr. Sherrid was the doctor I needed to  
24 see with regard to this illness, because most  
25 cardiologists have thousands of patients, but

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2 echocardiogram, he found that I had septal  
3 thickening.

4 Q. Septal?

5 A. Yes, s-e-p-t-a-l. It separates the  
6 left and right chambers. Normal septal  
7 thickness is about 9 to 11 millimeters. Mine  
8 was 17 millimeters.

9 Q. Through those tests, is that how  
10 he -- after those two tests, did he diagnose  
11 you with HCM?

12 A. Based on the fact of family history  
13 and the thickening of the heart wall, it was  
14 safe to say that I had hypertropic  
15 cardiomyopathy.

16 Q. Did Mr. Sherrid suggest any  
17 treatment?

18 A. Yes.

19 Q. What treatment did he suggest?

20 A. He -- because of the propensity of  
21 the sudden death, which is not common, it's  
22 more on the remote side of that illness. But  
23 because of the family history of sudden  
24 deaths, he felt it was necessary that I  
25 receive a fibrillator. There is no treatment



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JOHN K. WELCH

December 8, 2010

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Welch

for the disease to reverse the thickening of the heart wall, but they do prophylactic measures, such as a defibrillator, so that would prevent you from dying suddenly should you be presented with an arrhythmia that would cause you to die.

Q. Is the defibrillator surgically implanted?

A. Yes.

Q. When did you have that procedure?

A. 1997.

Q. Did Dr. Sherrid perform that procedure?

A. No.

Q. Who performed that?

A. Dr. Ehlert, E-h-l-e-r-t.

Q. How did you come in contact with Dr. Ehlert?

A. He's with Dr. Sherrid. He's the -- Dr. Sherrid is the director and Dr. Ehlert is the electrophysiologist.

Q. Were you in the hospital for that procedure?

A. Yes.



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1  
2 Q. How long have you been on that  
3 medication?

4 A. Since the beginning. 1997.

5 Q. Any periods of time where there was  
6 a break where you weren't taking Atenolol?

7 A. No.

8 Q. Any other medication specifically  
9 for your HCM?

10 A. No.

11 Q. Physically, what effects does the  
12 HCM have on you on a day-to-day basis?

13 A. It could be none. It could be just  
14 sudden death. The newspaper boy running down  
15 the street throwing his newspaper, and he  
16 dies. But it's limited, once diagnosed.  
17 You're limited, once diagnosed, because they  
18 don't -- they know what's dangerous for you,  
19 such as lifting packages. You should receive  
20 the proper sleep. Eating is, you know, it's  
21 not like a normal heart illness where eating  
22 is of concern, because it doesn't effect the  
23 arteries. It's the electrical disruption.

24 Q. So in what ways is it limiting?

25 A. It could -- you could get out of



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1 Welch  
2 breath easily while walking uphill or  
3 upstairs. You can get dizzy. You can black  
4 out. You can have an arrhythmia that could  
5 lead to, graduate to other levels, like  
6 ventricular tachycardia, ventricular  
7 fibrillation.

8 Q. I guess, because I want to be clear,  
9 you're using the word "could." Specifically,  
10 how has it been limiting for you?

11 A. Limited, I don't understand that  
12 question.

13 Q. Sure.

14 You said that HCM can be limiting,  
15 and it can make you out of breath easily and  
16 it can make you -- those are, to me,  
17 hypotheticals.

18 How have you been affected by the  
19 HCM? Are you out of breath easily, those type  
20 of --

21 A. I get out of breath, where I once  
22 never would. I get tired very easily. And  
23 then the medication used to treat the  
24 illness --

25 Q. That's the Atenolol?



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A. -- can cause sleepiness and can cause daytime, you know, sleepiness, when you're not really wanting to go to sleep.

Q. Any other --

A. It can cause --

Q. Any others?

A. I'm sorry.

Chest pain.

Q. Has it caused you chest pain?

A. Yes.

Did I say shortness of breath?

Q. Yes, you did.

Now, since 1997 when being diagnosed with HCM and starting on the Atenolol, how frequently would you say you are out of breath?

A. Maybe a couple times a week.

Q. So two-to-three times a week?

A. Right.

Q. Three to four?

A. Depending on my activity.

Q. So what's an example of an activity where you're being more prone to be --

A. Lifting a package. Lifting a



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1                                    Welch  
2        could die suddenly from this.

3                                    And so a lot of times the treatment  
4        is based on the doctor having to make educated  
5        guesses on family history. While someone  
6        might have thickening heart wall, someone  
7        might have a septal thickness, but they would  
8        die suddenly. If it wasn't a severe septal  
9        thickness, they could still die, because of  
10       the electrical disruption. And while someone  
11       might have three times the thickening heart  
12       wall, they might not ever die from the  
13       disease.

14                                  Q.     Right. Turning back to your  
15        experience with HCM and how its affected you.  
16        We talked a little bit about how frequently  
17        you'll be out of breath, and I think you said  
18        a couple times a week, depending on your  
19        activity.

20                                  A.     Right.

21                                  Q.     How frequently do you find yourself  
22        getting tired?

23                                  A.     Tired, every day. Every single day.

24                                  Q.     Would you say more tired than you  
25        were prior to having been diagnosed with HCM?



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A. Definitely.

Q. How often have you experienced, from 1997 until today, chest pain?

A. That would have to be also based on the activity. But chest pain as well might be -- it's usually accompanied by the shortness of breath, so that would be similar to a few times. Three times a week.

Q. Is it always triggered by an event, or you sometimes can be sitting calmly and get a symptom?

A. Sometimes doing nothing.

Q. How does the HCM limit your ability to work?

A. In the capacity at UPS.

Q. We can be specific to UPS, and then we can go general.

Start with limit your ability to work at UPS.

A. Can't operate a commercial vehicle, because the department of transportation prohibits it.

Q. Is that because of the defibrillator?



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A. Right. The likeliness of driving a 16,000-pound truck and having a blackout or defibrillation.

Q. Any other limits?

A. Can't lift packages.

Q. Any packages?

A. I can lift packages. It used to be 30 pounds, and I believe now it's even 20 pounds, because Dr. Sherrid's belief is that things have changed. Because now he's starting to see arrhythmias in this disease. They used to call it subaortic stenosis, which means idiopathic hypertrophic subaortic stenosis. Idiopathic meaning no known cause. No longer no known cause, they know what it is. Hypertropic, meaning thickening of the heart wall. Subaortic meaning below the lower chambers. And stenosis, thickening of the heart wall. So it's no longer known as idiopathic hypertropic stenosis, it's hypertropic cardiomyopathy.

Q. So you have a lifting restriction, you said now 30?

A. He's saying now.

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1 Welch

2 I'm sorry, yes.

3 And I believe a recent note that was  
4 sent to perhaps the district nurse even  
5 alluded to that it might even be 20 pounds.  
6 Last I remember it was 40, when I first got  
7 diagnosed, but somehow graduated or receded to  
8 20.

9 Q. Any other ways the HCM specifically  
10 limits your ability to work at UPS?

11 A. In combination with some other  
12 ailments that I have.

13 The bipolar, bipolar disorder is  
14 exacerbated by disruptions in my circadian  
15 rhythm of proper overnight sleep. So if I get  
16 out of that routine, that would cause me to  
17 not have the rest I need, which will comment  
18 more difficult environment for my heart. So  
19 in combination, it kind of lends more danger  
20 with having the bipolar and even the restless  
21 legs. Anything that can keep me from getting  
22 my rest.

23 Q. In what ways does your HCM limit you  
24 beyond UPS, in terms of work you could do for  
25 other jobs?



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A. I guess the restrictions would remain the same. And --

Q. In what way does the HCM limit you, in terms of your personal life?

A. Personal life. I think the medication can cause me to have to purchase Viagra, but that hasn't happened yet.

Q. Any other limitations the HCM has on you, outside of work?

A. Limitations, a lot of the limitations are based on what I'm feeling and the need to curb the symptoms.

Q. What do you mean by that?

A. If I like to go mountain climbing, and I did that, or long walks, and I felt the shortness of breath or things of that nature, then, obviously, I would have to alter my activity.

Q. Do you mountain climb?

A. No.

Q. Do you do any physical activities?

A. I used to lift weights. No, I no longer can do that.

I partake in recreational



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activities.

Q. What recreational activities?

A. Shooting the basketball around, without running around. Basketball is very bad, because it's stop and go.

Q. Any other sports?

A. Frisbee. Maybe baseball or softball or something of that nature. Dr. Sherrid warned me of the need to not take it single and turn it into a double or a triple.

I'm playing with a bunch of old guys now, anyway.

Q. How frequently do you engage in physical activity?

A. Physical activity, mostly with my kids would throw the football around, maybe once every other week.

Q. And softball or baseball?

A. If I do that, I'll do it on a limited -- I'm not going to be in the outfield or not going to run around the bases. I would be -- like be the pitcher.

Q. How frequently would you say you play those kind of sports?



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A. Well, I played the last season with them, and I only played two times.

Q. Are you on a team?

A. Yes.

Q. What team are you on?

A. Well, they're like a bunch of guys that I grew up with. Massapequa Pirates.

Q. And when you say the last season, 2010 season?

A. Right.

Q. And you played twice?

A. Right.

Q. How long have you been on the team?

A. Before they were even at -- and it's been on and off. It's been sporadic, depending on, depending on my work schedule and things of that nature. So I played, I played baseball, you know, and softball, most of my life and things of that nature, but maybe 15 years.

Q. Do you normally play the majority of the games --

A. No.

Q. -- out of a season?



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A. The season is 14 games.

Q. How many would you say, on average, you're able to play?

A. Two, maybe three.

Q. Every year for the last 15?

A. I told them, listen, on an -- out of exception. Like if you're short guys, I'll come in and throw the baseball.

Q. So when you said this year you only played two times, that's pretty average?

A. Average, yes.

Q. At what point, do you know, did you make UPS aware of your HCM?

A. When I had to go get the surgery, the implant.

Q. So that was '97?

A. Yes.

Q. Do you recall who you spoke to about it?

A. I spoke to Bruce Pace.

Q. Was he your manager at the time?

A. Yes. The manager.

Q. And that was in 1997?

A. Yes.



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1 Welch  
2 go to Dr. Waxner back in 2000? What symptoms  
3 were you having?

4 A. Falling asleep. Driving off the  
5 road.

6 Q. Have those symptoms improved since  
7 your treatment?

8 A. Yes.

9 Q. I might have asked you this already,  
10 but I don't recall.

11 Are you still using a mask at night  
12 to sleep?

13 A. Yes. Although it's not the most  
14 comfortable thing. Sometimes it gets cold,  
15 and you take it out. You take it off without  
16 even your knowledge of it. So it is  
17 cumbersome.

18 Q. What effects does the sleep apnea  
19 have on you, physically?

20 A. Effects, can cause daytime  
21 sleepiness.

22 Q. Does it cause you daytime  
23 sleepiness?

24 A. I don't know what's causing me  
25 daytime sleepiness at this point. I have HCM,



JOHN K. WELCH

December 8, 2010

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Welch

restless legs, sleep apnea, a 12-hour work day.

Q. What other effects does the sleep apnea have on you?

A. What other effects?

Q. Physical effects.

A. I don't think it has any other effects, other than the lack of sleep.

Q. Does the sleep apnea in any way limit your ability to do any physical activities in life?

A. No.

Q. Does the sleep apnea in any way limit your ability to work at UPS?

A. No.

Q. Does it limit your ability to work anywhere else?

A. No.

Q. Have you ever been hospitalized for your sleep apnea?

A. No.

Q. You said you began using the mask around 2000, whenever you were first diagnosed.



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A. Right.

Q. Now you also said you suffer from -- I'm sorry. When did UPS become aware of your sleep apnea, if you know?

A. In 2005. Actually, that's when I was -- that's when I was -- because now it all came clear to me.

Q. Diagnosed with sleep apnea in '05?

A. Yep.

Q. By Dr. Waxner?

A. Yep.

Q. Sleep study '05?

A. Because there was a significant event at UPS in 2005 as a result of that.

Q. Did that change when you think you started being treated by Dr. Bahatnagar, which we had said was '06 or '07?

A. Probably more like '07.

Q. So UPS became aware of your sleep apnea in 2005. You notified them?

A. Yes.

Q. Who did you notify?

A. Roberto Charles. He was the preloader manager. He was a -- there was a

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Welch

note from Dr. Waxner that said I needed to go to a sleep study for two days, and failure to do so would -- failure, you know, untreated sleep apnea, you know, I guess he gave some pretty strong words that, what could happen if someone didn't get it done. And so I presented that to Roberto Charles, and he brought it to his division manager which was Tom Cuccce.

Q. So you personally handed the note to Mr. Charles?

A. Yes.

Q. Through the years with your sleep apnea from 2005 to present, has its severity or effect on you changed in any way, gotten worse, gotten better --

A. No.

Q. -- been constant?

A. Pretty much.

Q. Anything you can think of that you can't do because of the sleep apnea?

A. No.

Q. Anything you can think of that you can't do because of the HCM?



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A. HCM? Lift packages in excess of the restricted amount. Whatever it might be at the present time and not do it repetitiously.

Q. Anything else?

A. Not to exceed the hours restriction and not to do the overnight hours.

Q. Anything else in your life that you can't do, because of the HCM?

A. No.

Q. You also mentioned you had been diagnosed with restless leg syndrome.

A. Yes.

Q. When was that diagnosis made?

A. Its been a long time. Probably like 1992.

Q. Who made that, what doctor made that diagnosis?

A. Regular general practitioner. I don't even know who it was at the time. But he said you have restless legs, because I was losing sleep and my legs were moving uncontrollably. And I couldn't stay sitting, I had to stand up and walk around.

Q. Did that doctor perform any tests to



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'97 to until today? Gone up, gone down?

A. I think it was 50, and it went to 100.

Q. Do you know around when that happened?

A. Probably around 2000.

Q. So for your restless leg syndrome, is the Mirapex the only treatment that the doctor recommended?

A. That's it.

Q. Has that medication helped to alleviate --

A. Amazing. The best thing I ever took. Knocks it right out. I could not do without it.

Q. So while on the Mirapex, do you feel as though you're almost cured with restless leg syndrome?

A. Yes, I do.

Q. Have there been any periods where you've tried to go off the medicine?

A. No way.

Q. So you've been on it consistently since '92?



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1  
2 A. Yes.

3 Q. Have you ever been hospitalized for  
4 your restless leg syndrome?

5 A. No.

6 Q. When did UPS ever learn that you had  
7 restless leg syndrome?

8 A. That's kind of like when you have a  
9 toothache, you don't like tell your boss.  
10 Like restless legs is not something that might  
11 have damaging effects.

12 But I guess also coupled with other  
13 things, I was asked to tell what I was plagued  
14 with, so it became a question that was  
15 answered.

16 Q. Does your restless leg syndrome in  
17 any way limit your ability to work at UPS?

18 A. No.

19 Q. Does the restless leg syndrome limit  
20 your ability to work anywhere else?

21 A. No.

22 Q. Does it in any way limit your  
23 personal life, anything you want to do  
24 personally or physically outside of work?

25 A. Yes.



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Q. How so?

A. Can't drink coffee and Coca Cola, because that caffeine seems to make it worse.

Q. Any other ways, any other limitations caused by the restless leg syndrome?

A. No.

Q. I think you also mentioned you had been diagnosed with bipolar disorder.

A. Yes.

Q. When were you diagnosed with bipolar disorder?

A. 2007.

Q. Who diagnosed your bipolar disorder?

A. Veterans Administration in East Northport.

Q. Any specific doctor there?

A. There were so many. I would have to -- I can't possibly answer that.

Q. How was your bipolar disorder diagnosed?

A. I went three days without sleep, and it's -- in a bipolar episode you could be exhausted, and you just cannot go to sleep,



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Maybe five weeks.

Q. Inpatient?

A. Inpatient.

Q. Is it during that stay that they diagnosed your bipolar disorder?

A. Yes.

Q. Did they provide any treatment for your bipolar disorder?

A. They give medication.

Q. What medication did they give you?

A. They gave me Depakote.

Q. Do you know the milligrams?

A. 500. Three times a day.

Q. Any other medications for the bipolar disorder?

A. Well, they give me the -- also I guess it goes hand in hand with the depression, so the Zoloft.

But I get the generic of it. I don't even know the name of it. It's kind of a long -- a lot of letters.

Q. Do you know the dosage?

A. A hundred.

Q. Is that once a day?



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1  
2 A. Yes.

3 Q. Any other medications for the  
4 bipolar disorder?

5 A. No.

6 Q. Have you been on both the Zoloft and  
7 the Depakote since 2007, when you were  
8 diagnosed?

9 A. Yes.

10 Q. Do the medications help in  
11 alleviating some of the symptoms of the  
12 bipolar disorder?

13 A. Yes, they do.

14 Q. Are there any ways in which the  
15 bipolar disorder affects your daily life?

16 Do you have symptoms daily?

17 A. No. It's, it's, you can go into  
18 deep depressions and highs. That's  
19 characteristic of it. So it keeps me out of  
20 those peaks and valleys.

21 Q. How frequently would you say you  
22 enter those peaks and valleys?

23 A. Back then it was often.

24 Q. Prior to being medicated?

25 A. Right. Now I think just -- it's



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1 Welch  
2 pretty consistent with what normal people  
3 experience, highs and lows. Just daily trials  
4 and tribulations of life.

5 Q. So is it fair to say today you don't  
6 necessarily feel like you're suffering the  
7 symptoms of bipolar disorder?

8 A. No.

9 Q. Back then in 2007 you said it was  
10 frequent, the peaks and valleys.

11 Monthly, weekly, could you give an  
12 estimate of how --

13 A. It could be like a week of being  
14 low, or two weeks. And then it would go away  
15 and wouldn't come back.

16 But I think they're kind of  
17 magnified by circumstances as well.

18 Q. Do you know how long prior to 2007  
19 you were having those symptoms?

20 A. I didn't know I had it until then.

21 Q. Does your bipolar disorder limit  
22 your ability to work at UPS in any way?

23 A. Yes.

24 Q. How so?

25 A. They do not want me to change my



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